

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

15 Before the court is Plaintiff's Motion for Protective Order and to Quash Subpoena. (ECF  
16 No. 115.) Defendant has responded to Plaintiff's Motion (ECF No. 117); Plaintiff has replied to  
17 Defendant's Opposition (ECF No. 118). The court conducted a hearing on Plaintiff's motion on  
18 May 23, 2015. After consideration of the filings and arguments of counsel, the court granted Plaintiff's  
19 motion.

20 Plaintiff's motion for protective order (ECF No. 115) was prompted by a subpoena Defendant  
21 served on the custodian of Records of Young America Insurance Company of El Paso, Texas (YAIC).  
22 Plaintiff sought to quash Defendant's subpoena for records from YAIC as to what Plaintiff describes as  
23 a non-injury accident which occurred on October 21, 2013. Plaintiff argued Defendant's subpoena was  
24 served well after the February 16, 2015 discovery deadline (ECF No. 40 at 2). In addition, Plaintiff  
25 contends that if Defendant secures these records, it may generate a renewed deposition of Plaintiff,  
26 possible supplemental expert witness reports and other discovery.

Plaintiff states that Defendant did not undertake discovery which reasonably called for disclosure of what Plaintiff's counsel describes as being a non-injury, property damage accident. Plaintiff points

1 out Defendant only asked about pre or post accidents (before or after the accident which is the subject  
 2 of this lawsuit) “in which [Plaintiff] sustained bodily injury.” (ECF No. 117 at 3; emphasis added.)  
 3 Plaintiff answered he was only involved in a 2004 motor vehicle accident in which he sustained injury.

4 Defendant’s opposition states that Defendant did not know of this accident before close of  
 5 discovery. Although admitting Defendant’s interrogatories only inquired about accident involving bodily  
 6 injury, Defendant contends “Plaintiff never disclosed this accident despite its relevance to this claim for  
 7 damages in this litigation.” (*Id.*)

8 Defendant’s memorandum does not state how Defendant became aware of this accident. At oral  
 9 arguments, Defendant’s counsel stated Defendant’s insurer, shortly before this case was originally set  
 10 for trial<sup>1</sup> ran an “index” on Plaintiff. The October 21, 2013 accident was reported in the “index.” The  
 11 index did not reflect whether it was an injury or non-injury accident; as noted above, Plaintiff states it  
 12 was non-injury.

13 Plaintiff’s counsel emphasized that Defendant’s interrogatories only pertained to accidents which  
 14 caused “bodily injury.” Plaintiff did not reference the October 2013 accident because it did not involve  
 15 an injury to Plaintiff. Plaintiff states if Defendant wanted to know about *all* accidents, Defendant should  
 16 have framed the question in that context. Plaintiff’s counsel also stated that Plaintiff’s deposition was  
 17 not taken until late 2015, and despite the myriad of questions Defendant propounded, none pertained to  
 18 other non-injury accidents.

19 Had Defendant’s interrogatories in question been more broadly framed, e.g., inquiring about *all*  
 20 other accidents, the court might have been inclined to allow Defendant’s discovery (subpoena to YAIC)  
 21 to proceed. But the court is disinclined to re-open discovery at this late date when the premise is that  
 22 Plaintiff did not provide information as to a subject about which he was not asked, either in  
 23 interrogatories or in his deposition. Last, had the Defendant some scintilla of evidence Plaintiff was in  
 24 fact injured in the 2013 accident, either mentally or physically, the court might be persuaded to permit  
 25 discovery on this subject, but Defendant has not provided such information to the court.

26       ///

---

27  
 28       <sup>1</sup> The March 22, 2016 trial date was set on February 24, 2016. (ECF No. 99.)

1 Plaintiff's motion is therefore granted and Defendant's subpoena to Young America Insurance  
2 Company of El Paso, Texas is **quashed**.  
3

4 **IT IS SO ORDERED.**

5 DATED: May 24, 2016.

6   
7 WILLIAM G. COBB  
8 UNITED STATES MAGISTRATE JUDGE

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28